

**IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF WEST VIRGINIA**

HUNTINGTON DIVISION

KEITH FLOWERS,

Movant,

v.

CIVIL ACTION NO. 3:11-0574
(Criminal No. 3:09-00071)

UNITED STATES OF AMERICA,

Respondent.


MEMORANDUM OPINION AND ORDER

This action was referred to the Honorable Cheryl A. Eifert, United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636(b)(1)(B). The Magistrate Judge has submitted findings of fact and recommended that Movant's Application Under 28 U.S.C. § 2255 for Writ of Habeas Corpus by a Person in State or Federal Custody (ECF No. 115) be denied; Respondent's Motions to Dismiss Movant's Motion Pursuant to 28 U.S.C. § 2255 (ECF Nos. 123 and 124) be granted; and this civil action be dismissed, with prejudice, and removed from the docket of this Court. On October 1, 2012, Magistrate Judge Eifert entered an order amending the Proposed Findings and Recommendations to eliminate the reference to ECF No. 123, as that docket number corresponds with a Motion for a Sentence Reduction filed in the criminal action only and not Respondent's Motion to Dismiss. The Proposed Findings and Recommendation was mailed to Movant at U.S. Penitentiary at Terre Haute, IN, on August 21, 2012, returned marked "undeliverable" on August 30, 2012, and mailed to Movant at FCI Pollock, LA, on that same date. Neither party has filed objections to the Magistrate Judge's findings and recommendation.

Accordingly, the Court accepts and incorporates herein the findings and recommendation of the Magistrate Judge and **ORDERS** that Movant's Application Under 28 U.S.C. § 2255 for Writ of Habeas Corpus by a Person in State or Federal Custody (ECF No. 115) be **DENIED**; Respondent's Motion to Dismiss Movant's Motion Pursuant to 28 U.S.C. § 2255 (ECF No. 124) be **GRANTED**; and this civil action be **DISMISSED, with prejudice**, and removed from the docket of this Court, consistent with the findings and recommendation.

The Court **DIRECTS** the Clerk to forward copies of this written opinion and order to all counsel of record, and any unrepresented parties.

ENTER: October 3, 2012



ROBERT C. CHAMBERS
UNITED STATES DISTRICT JUDGE